IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

EUKA WADLINGTON,
No. 10296-424,
Petitioner,

vs. **Case No. 17–cv–449-DRH**

T.G. WERLICH

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Pro se Petitioner Euka Wadlington, currently incarcerated at FCI-Greenville, brings this habeas corpus action pursuant to 28 U.S.C. § 2241 to challenge the constitutionality of his confinement. Relying on the recent case of *Mathis v. United States*, ––– U.S. ––––, 136 S. Ct. 2243 (2016) and other recent decisions, he argues that his two prior Illinois state convictions[1] should not have been used to impose an enhanced sentence under the career offender sentencing guidelines.

This case is now before the Court for a preliminary review of the Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in United States District Courts. Rule 4 provides that upon preliminary consideration by the district court judge, "[i]f it plainly appears from the petition and any attached

[1] Page 6 of the Petition indicates that the prior convictions include delivery of a controlled substance and possession with intent to deliver a controlled substance. Page 3 of the Petition indicates that both prior convictions were for delivery of a controlled substance in violation of 720 ILCS 520/401. Petitioner identifies the following criminal case numbers from the Circuit Court of Cook County, Illinois: 88-cr-1839101 and 90-cr-1154801.

exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner." Rule 1(b) of those Rules gives this Court the authority to apply the rules to other habeas corpus cases, such as this action under 28 U.S.C. § 2241. Without commenting on the merits of Petitioner's claims, the Court concludes that the Petition survives preliminary review under Rule 4 and Rule 1(b).

BACKGROUND[2]

In 1998, Petitioner was indicted in the Southern District of Iowa for conspiracy to distribute and possess with intent to distribute cocaine and crack cocaine, and for attempted distribution of crack cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1) (Case No. 3:98-cr-242). The case proceeded to trial on April 26, 1999. On May 10, 1999, the jury returned a verdict convicting Petitioner on the conspiracy and attempted distribution counts and acquitting him on the actual distribution count. On August 5, 1999, the District Court sentenced Petitioner to concurrent life sentences and 10 years supervised release.

According to the Petition, Petitioner was sentenced as a career offender pursuant to the United States Sentencing Guidelines (USSG) at § 4B1.1. The sentencing enhancement was based on two prior Illinois controlled substance convictions.[3]

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[2] The following information is taken from the instant Petition and Petitioner's appeals in the Eighth Circuit. *See U.S. v. Wadlington,* 233 F.3d 1067 (8th Cir. 2000); *Wadlington v. U.S.,* 428 F.3d 779 (8th Cir. 2005).

[3] Page 6 of the Petition indicates that the prior convictions include delivery of a controlled substance and possession with intent to deliver a controlled substance. Page 3 of the Petition indicates that both prior convictions were for delivery of a controlled substance in violation of 720

Petitioner filed a direct appeal in September 1999. The Eighth Circuit Court of Appeals affirmed Petitioner's judgment and sentence on December 1, 2000. *U.S. v. Wadlington,* 233 F.3d 1067 (8th Cir. 2000). Thereafter, Petitioner's request for a rehearing was denied.

Petitioner then challenged his sentence under 28 U.S.C. § 2255. The district court denied the § 2255 petition on September 12, 2005. Following its denial of the § 2255 petition, the district court granted Petitioner's request for a certificate of appealability on (1) whether Petitioner was actually innocent, and (2) whether *Blakely* applies to cases brought under § 2255. The Eighth Circuit affirmed the denial of Petitioner's § 2255 petition on November 14, 2005. *Wadlington v. U.S.,* 428 F.3d 779 (8th Cir. 2005).

The Petition

Petitioner argues that, in light of *Mathis,* his prior Illinois drug offense convictions do not qualify as predicate offenses for a career-criminal enhancement. (Doc. 1, p. 3). Petitioner asks the Court to vacate his sentence and remand for re-sentencing without the enhancement. (Doc. 1, p. 10).

Discussion

As a general matter, "28 U.S.C. § 2241 and 28 U.S.C. § 2255 provide federal prisoners with distinct forms of collateral relief. Section 2255 applies to challenges to the validity of convictions and sentences, whereas § 2241 applies to

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ILCS 520/401. Petitioner identifies the following criminal case numbers from the Circuit Court of Cook County, Illinois: 88-cr-1839101 and 90-cr-1154801.

challenges to the fact or duration of confinement." *Hill v. Werlinger*, 695 F.3d 644, 645 (7th Cir. 2012) (citing *Walker v. O'Brien*, 216 F.3d 626, 629 (7th Cir. 2000). *See also Brown v. Rios*, 696 F.3d 638, 640 (7th Cir. 2012); *Valona v. United States*, 138 F.3d 693, 694 (7th Cir. 1998). Here, Petitioner is attacking his conviction and sentence, which points to § 2255 as the proper avenue for relief.

Under very limited circumstances, a prisoner may employ § 2241 to challenge his federal conviction or sentence. 28 U.S.C. § 2255(e) contains a "savings clause" which authorizes a federal prisoner to file a § 2241 petition where the remedy under § 2255 is "inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e). *See Hill*, 695 F.3d at 648 ("'Inadequate or ineffective' means that 'a legal theory that could not have been presented under § 2255 establishes the petitioner's actual innocence.'") (citing *Taylor v. Gilkey,* 314 F.3d 832, 835 (7th Cir. 2002). *See also United States v. Prevatte*, 300 F.3d 792, 798-99 (7th Cir. 2002). The fact that Petitioner may be barred from bringing a second/successive § 2255 petition is not, in itself, sufficient to render it an inadequate remedy. *In re Davenport*, 147 F.3d 605, 609-10 (7th Cir. 1998) (§ 2255 limitation on filing successive motions does not render it an inadequate remedy for a prisoner who had filed a prior § 2255 motion). Instead, a petitioner under § 2241 must demonstrate the inability of a § 2255 motion to cure the defect in the conviction. "A procedure for postconviction relief can be fairly termed inadequate when it is so configured as to deny a convicted defendant any

opportunity for judicial rectification of so fundamental a defect in his conviction as having been imprisoned for a nonexistent offense." *Davenport*, 147 F.3d at 611.

The Seventh Circuit has explained that, in order to fit within the savings clause following *Davenport*, a petitioner must meet three conditions. First, he must show that he relies on a new statutory interpretation case rather than a constitutional case. Secondly, he must show that he relies on a decision that he could not have invoked in his first § 2255 motion, *and* that case must apply retroactively. Lastly, he must demonstrate that there has been a "fundamental defect" in his conviction or sentence that is grave enough to be deemed a miscarriage of justice. *Brown v. Caraway*, 719 F.3d 583, 586 (7th Cir. 2013). *See also Brown v. Rios*, 696 F3d 638, 640 (7th Cir. 2012).

In *Mathis v. United States*,— U.S. —, 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016), the Supreme Court held that an Iowa burglary statute which allowed for a conviction based on entry to a vehicle was too broad to qualify as a "generic burglary" statute. "Generic burglary" requires that the unlawful entry must have been made to a building or other structure. Because the Iowa statute was not "divisible" into distinct elements according to where the crime occurred, the *Mathis* Court held that a conviction under that state law could not be used as a predicate offense to enhance a federal defendant's sentence under the burglary clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii). *Mathis*, 136 S. Ct. at 2250-51; *see also United States v. Haney*, 840 F.3d 472,

475-76 (7th Cir. 2016). *Mathis* is a statutory interpretation case rather than a constitutional case, thus it satisfies the first element of the savings clause. *See Dawkins v. United States*, 829 F.3d 549, 551 (7th Cir. 2016) (because *Mathis* "is a case of statutory interpretation," claims based on *Mathis* "must be brought, if at all, in a petition under 28 U.S.C. § 2241").

As to the second factor, the decision in *Mathis* was announced on June 23, 2016, long after Petitioner's § 2255 motion was denied. Accordingly, Petitioner could not have relied on *Mathis* in that proceeding. Further, the Seventh Circuit has determined that "substantive decisions such as *Mathis* presumptively apply retroactively on collateral review." *Holt v. United States*, 843 F.3d 720, 721-22 (7th Cir. 2016) (citing *Davis v. United States*, 417 U.S. 333 (1974); *Montgomery v. Louisiana*, — U.S. —, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016)).

Finally, Petitioner asserts that the increase in the calculation of his sentencing range based on the career-criminal enhancement (which relied on the Illinois drug convictions), may have resulted in a longer sentence. If so, this could be deemed a miscarriage of justice. The Petition thus facially satisfies the conditions to be considered in a § 2241 proceeding under the savings clause of § 2255(e).

It is notable, however, that "[t]he Supreme Court's decision in *Mathis* dealt with the Armed Career Criminal Act (ACCA), not the federal sentencing Guidelines." *United States v. Hinkle*, 832 F.3d 569, 574 (5th Cir. 2016). The *Mathis* decision thus may or may not be applicable to Petitioner's sentence, where

the sentencing enhancement was determined based on the advisory sentencing guidelines, not the ACCA statute. The Supreme Court recently held that the residual clause in USSG § 4B1.2(a) was not subject to a vagueness challenge, distinguishing the situation where a sentence was based on the advisory guidelines from a sentence imposed under the residual clause of the ACCA statute. *Beckles v. United States*, No. 15-8544, 2017 WL 855781 (U.S. Mar. 6, 2017) (distiguishing *Johnson v. United States*, — U.S. —, 135 S. Ct. 2551 (2015)).

Given the limited record before the Court at this stage, and the still-developing application of the *Mathis* decision, it is not plainly apparent that Petitioner is not entitled to habeas relief. *See* Rule 4 of the Rules Governing § 2254 Cases in United States District Courts. Therefore, the Court finds it appropriate to order a response to the Petition.

Disposition

IT IS HEREBY ORDERED that Respondent shall answer or otherwise plead within thirty days of the date this order is entered (on or before August 16, 2017).[4] This preliminary order to respond does not, of course, preclude the Government from raising any objection or defense it may wish to present. Service upon the United States Attorney for the Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois, shall constitute sufficient service.

[4] The response date ordered herein is controlling. Any date that CM/ECF should generate in the course of this litigation is a guideline only. *See* SDIL-EFR 3.

IT IS FURTHER ORDERED that pursuant to Local Rule 72.1(a)(2), this cause is referred to United States Magistrate Judge Clifford J. Proud for further pre-trial proceedings.

IT IS FURTHER ORDERED that this entire matter be **REFERRED** to United States Magistrate Judge Proud for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Petitioner is **ADVISED** of his continuing obligation to keep the Clerk (and each opposing party) informed of any change in his whereabouts during the pendency of this action. This notification shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. *See* Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

Dated: July 17, 2017

Digitally signed by
Judge David R. Herndon
Date: 2017.07.17
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United States District Judge